The Standards of Criminal Justice in a Nutshell

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England has been blessed with one court system. The English barrister is burdened with only one set of procedures, and the substantive law is uniform throughout the British Empire.

In the United States, we have our English common law heritage complicated by many different procedures. Moreover, variations exist in the substantive law of our fifty states and in the federal law announced in our eleven federal judicial circuits.

In the last decade, the federal courts have reviewed state criminal law and procedure to determine whether state criminal practices and procedures measured up to federal constitutional standards. In many instances, the federal courts have declared that the constitutional right in issue was enforceable against the state through the fourteenth amendment.¹

On March 11, 1971, the President and the Chief Justice of the United States presented historic addresses at The First Conference of the Judiciary at Williamsburg, Virginia. President Nixon said:

"We all know how urgent the need is for that improve-

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¹ Adapted from an address delivered by Justice Erickson at the National Judicial Conference on Standards for the Administration of Criminal Justice, Louisiana State University Law Center, Baton Rouge, Louisiana, February 11, 1972. This publication is made possible by a grant from the Criminal Justice Program, Louisiana State University Law School.

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¹ U.S. Const. amend. XIV. See, e.g.,
ment at both the State and Federal level. Interminable delays in civil cases; unconscionable delays in criminal cases; a steadily growing backlog of work that threatens to make the delays worse tomorrow than they are today—all this concerns everyone who wants to see justice done.

“Overcrowded penal institutions; unremitting pressure on judges and prosecutors to process cases by plea bargaining, without the safeguards recently set forth by the American Bar Association; the clogging of court calendars with inappropriate or relatively unimportant matters—all this sends everyone in the system of justice home at night feeling as if they have been trying to brush back a flood with a broom.

“Many hardworking, dedicated judges, lawyers, penologists and law enforcement officials are coming to this conclusion: A system of criminal justice that can guarantee neither a speedy trial nor a safe community cannot excuse its failure by pointing to an elaborate system of safeguards for the accused. Justice dictates not only that the innocent man go free, but that the guilty be punished for his crimes.

“When the average citizen comes into court as a party or a witness, and he sees that court bogged down and unable to function effectively, he wonders how this was permitted to happen. Who is to blame? Members of the bench and the bar are not alone responsible for the congestion of justice.

“The Nation has turned increasingly to the courts to cure deep-seated ills of our society—and the courts have responded; as a result, they have burdens unknown to the legal system a generation ago. In addition, the courts had to bear the brunt of the rise in crime—almost 150% higher in one decade, an explosion unparalleled in our history.”

His remarks were followed by a warning from Chief Justice Warren E. Burger that was in parallel form to the President’s clarion call for improvement. The Chief Justice said:

“Today the American system of criminal justice in every phase—the police function, the prosecution and defense, the courts and the correctional machinery—is suffering from a severe case of deferred maintenance. By and large, this
is true at the state, local and federal levels. This failure of our machinery is now a matter of common knowledge, fully documented by innumerable studies and surveys.

"As a consequence of this deferred maintenance we see

"First, that the perpetrators of most criminal acts are not detected, arrested and brought to trial;

"Second, those who are apprehended, arrested and charged are not tried promptly because we allow unconscionable delays that pervert both the right of the defendant and the public to a speedy trial of every criminal charge; and

"Third, the convicted persons are not punished promptly after conviction because of delay in the appellate process. Finally, even after the end of litigation, those who are sentenced to confinement are not corrected or rehabilitated, and the majority of them return to commit new crimes. The primary responsibility of judges, of course, is for the operation of the judicial machinery but this does not mean they can ignore the police function or the shortcomings of the correctional systems.

"At each of these three stages—the enforcement, the trial, the correction—the deferred maintenance became apparent when the machinery was forced to carry too heavy a load. This is the thing that happens to any machinery whether it is an industrial plant, an automobile or a dishwasher. It can be no comfort to us that this deferred maintenance crisis is shared by others; by cities and in housing, in the field of medical care, in environmental protection, and many other fields. All of these problems are important, but the administration of justice is the adhesive—the very glue—that keeps the parts of an organized society from flying apart. Man can tolerate many shortcomings of his existence, but history teaches us that great societies have foundered for want of an adequate system of justice, and by that I mean justice in its broadest sense."

The need for reform in the criminal law field caused the American Bar Association, at the instance of the Institute of Judicial Administration at New York University, to accept the
challenge of preparing a set of standards of criminal justice relating to the proper method of handling a criminal case. The Standards were prepared for use in fifty states and in our federal courts. The objectives of the Standards are to promote effective law enforcement and the adequate protection of the public and to safeguard and amplify the constitutional rights of those accused of the commission of crimes.

Seventeen Standards have been prepared which provide guidance at each stage of criminal proceedings. The Standards begin with the police function and end with the last post-conviction proceeding. The Standards were prepared by the leading professors, lawyers, and judges in the United States. When the project commenced, Chief Judge Edward Lumbard of the Second Circuit accepted the responsibility for overseeing the entire project. He relinquished his position to then United States Circuit Judge Warren E. Burger of the District of Columbia, after serving with distinction from 1964-1968. When Warren Burger became our Chief Justice, the project was assigned to William Jameson, Senior United States District Judge from Montana, who was a former President of the American Bar Association. Judge Jameson has caused the Standards project to be completed and has assisted materially in the implementation of the Standards.

Today, all but two of the Standards are complete. The two Standards that have yet to be finalized are those dealing with the Urban Police Function and the Function of the Trial Judge. The fifteen Standards that have been approved and which are all interrelated bear the following titles:

- Providing Defense Services
- Pretrial Release
- Fair Trial and Free Press
- Electronic Surveillance
- Discovery and Procedure Before Trial
- Pleas of Guilty
- Joinder and Severance
- Speedy Trial
- Trial by Jury
- Sentencing Alternatives and Procedures
- Probation
- Criminal Appeals
Appellate Review of Sentences
Post-Conviction Remedies
The Prosecution Function and the Defense Function

Following the preparation of the Standards, it became necessary to see that the Standards were implemented in every state and put to use. Implementation of all of the Standards, except Fair Trial and Free Press, has been entrusted to the Criminal Law Section of the American Bar Association. Retired United States Supreme Court Justice Tom C. Clark heads the Implementation Committee. Pilot Projects were undertaken in Arizona, Florida, and Texas. Arizona was selected because it was a rule-making state, and rules have now been prepared, at the instance of the supreme court, that will cause the Standards to be the law of Arizona. Florida served as a pilot state because its procedures are dependent upon both statute and rule. The Supreme Court of Florida implemented the Standards by rule and directed that legislation be enacted to complete the project. Texas, the last of the pilot states, was compelled to implement the Standards through legislation. Hopefully, the legislature will complete the project in Texas at a very early time.

In order to properly implement the Standards, it was necessary for comparative studies to be made to determine how the law of the particular state in question compared with the Standards. Arizona, with the assistance of its two law schools, compared the Arizona law with the Standards, the federal law, and the federal rules; made suggested comments; and offered a proposed rule. Comparative analyses are being prepared or have been completed in Colorado, Wisconsin, Minnesota, Arkansas, Maryland, Missouri, Nebraska, Illinois, Washington, New York, New Hampshire, Pennsylvania, and Georgia. Conferences to introduce the Standards have also been held, not only in the pilot states, but in nearly all of the states where a comparative analysis was undertaken.

In 1969, the Tenth Circuit directed its entire attention at

2. Responsibility lies with a special committee which was first headed by Paul C. Reardon of the Supreme Judicial Court of Massachusetts and now is under the chairmanship of Judge John Gibbons of the United States Court of Appeals for the Third Circuit.
3. Arizona University and Arizona State University.
its Judicial Conference to the Standards of Criminal Justice. Through the Criminal Law Section and the Section of Judicial Administration of the American Bar Association, as well as the Appellate Judges Conference, a National Judicial Conference on Standards for the Administration of Criminal Justice, designed to inform all appellate judges of the importance of the Standards in their practice, has been held at Louisiana State University at Baton Rouge, with more than three hundred appellate judges in attendance. The Standards have been widely cited in nearly all of our appellate courts. Moreover, the black-letter declarations which comprise the Standards, with abridged commentaries, will soon be published in one volume to facilitate reference to the entire set of interrelated Standards. Once the Standards have been published in that form, Shepard's Citations, Inc., plans to provide the citator service for the Standards. The West Publishing Company has also agreed to include the Standards in its key number classification to assist lawyers and judges in obtaining ready access to the Standards. In addition, Professor Paul Wilson of the University of Kansas Law School has formulated a model set of rules as guidelines for appellate courts that have the rule-making power.

In a legal sense, tomorrow's law in the criminal law field should be hinged to the Standards. The seventeen Standards contain not only black-letter statements, but commentaries that supply all the existing law on the subject in issue. The Standards are an ideal desk book and are being looked to more and more by those who practice in the criminal law field. In a nutshell, the Standards are capsulated in this article.

**Providing Defense Services**

The Standards Relating to Providing Defense Services are based on the concept that an adversary proceeding will not work at its best unless both the defendant and the prosecution are represented by competent counsel. In addition, the Standards

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5. See ABA Project of Minimum Standards for Criminal Justice, Standards Relating to Providing Defense Services § 1.1 (app. draft 1968) [hereinafter cited as Defense Services]. See also McDonald v. State, 459 S.W.2d 806 (Ark. 1970), in which the court cites § 1.2 relating to methods of providing defense services.
adopt the position that provision must be made for investigatory, expert, and other supporting services necessary to an adequate defense.\(^6\)

Access to counsel is declared to be a right of the criminally accused at every stage of the proceeding, beginning with pretrial proceedings and continuing through post-conviction proceedings.\(^7\) In general, counsel should be provided in all cases where loss of liberty may occur, including civil cases where mental competency is in issue.\(^8\)

In looking to a basis for providing assistance of counsel, the draftsmen refused to require poverty as a *sine qua non* to the appointment of a lawyer to represent a defendant who is accused of a crime that could deprive him of his liberty. Instead, substantial hardship to the family was established as the criterion upon which counsel would be assigned.\(^9\) In accordance with this proposal, the defendant should contribute that portion of the attorney's fee which he can afford.

The controversial question of public defender versus the appointive system is not solved by the Standards; however, the Standards do require that the public defender's office be insulated from political influence in the selection of its staff.\(^10\) To the joy of all those who serve in states where the indigent obtain counsel through court appointment, the Standards sug-

\(^6\) Defense Services § 1.5; see United States v. Taylor, 437 F.2d 371, 377 (4th Cir. 1971). See also People v. Watson, 36 Ill.2d 226, 221 N.E.2d 645 (1966).


A recent case which involves the issue of whether a defendant is entitled to court-appointed counsel for offenses with maximum penalties of six months' imprisonment is now before the United States Supreme Court on reargument. State of Florida ex rel. Argererger v. Hamlin, 92 S. Ct. 596 (1971).


\(^8\) Defense Services § 4.2. For cases citing this provision, see United States ex rel. Bey v. Connecticut State Board of Parole, 443 F.2d 1079, 1085 (2d Cir. 1971); Bearden v. South Carolina, 443 F.2d 1090, 1099 (4th Cir. 1971).


\(^10\) Defense Services § 3.1.
gest that court-appointed counsel receive reasonable compensation.11

PRETRIAL RELEASE

The Standards Relating to Pretrial Release incorporate the best features of the Manhattan Bail Project12 and the Federal Bail Reform Act of 1966.13 The old and time-worn theory that the risk of financial loss to a defendant is necessary to insure against flight to avoid prosecution is rejected in the Standards as being unsound.14 Because monetary bail inevitably discriminates against the poor,15 the Standards recommend its use only as a last resort.16 Whenever possible, the Standards recommend that a summons or citation be issued to avoid the necessity of arrest, embarassment to the accused, and the expense of incarceration, both to society and to the accused.17 Release on personal recognizance is also recommended favorably.18

The lawyer for the accused has a heavy duty under the Standards to secure all the relevant facts regarding the accused which will establish that the risk of flight is minimal and that the accused is entitled to release on bail.19 The basis for release remains relatively unchanged, inasmuch as the Standards suggest that the court be supplied with information relating to the nature of the offense charged, the character of the defendant,

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11. Id. § 2.4.
17. PRETRIAL RELEASE §§ 2.1, 3.1.
18. Id. §§ 1.2(a), 5.1.
19. The accused should also be assured a prompt appearance before a judicial officer. See, e.g., Fulks v. State, 262 N.E.2d 651, 659-60 (Ind. 1970), citing §§ 4.1-4.3 of PRETRIAL RELEASE.
his ties with the community, his financial ability, and the likelihood that he will appear for trial.20

The question of whether preventive detention should be permitted caused the committee formulating the Standards to have serious misgivings. Given that the purpose of bail is to insure the defendant's presence at the time of trial,21 the committee cast aside preventive detention and chose conditional release as an alternative.22 The conditions which the court can impose upon release are such that the public, the community, and the defendant's rights can be adequately protected.

Because pretrial release is a function of committing magistrates and trial judges whose actions often go unreported, the impact of the Standards to date is largely unknown. The Standards have been cited in Colorado,23 and trial judges in that state are now on notice that the Standards should be considered and followed in making all release decisions.

FAIR TRIAL AND FREE PRESS

The Standards Relating to Fair Trial and Free Press24 are an outgrowth of a series of cases in which the United States Supreme Court held that a defendant had been denied a fair trial because of accusatorial and prejudicial newspaper publicity.25 The Kennedy assassination highlighted the need for standards when the news media met the public demand for information by widespread dissemination of information that was, in many respects, inaccurate.26 Many state and federal courts reviewed the problem with widely different results before Sheppard v. Maxwell27 was announced.

20. PRETRIAL RELEASE §§ 4.5(d), 5.1(b), 5.3(d).
22. PRETRIAL RELEASE §§ 5.5-5.9.
In an effort to resolve the conflict between the right to a fair trial and the first amendment's guarantee of a free press, standards of conduct were formulated for lawyers, as well as court and law enforcement personnel. These Standards specify types of prejudicial information which lawyers participating in a case should not release. They also encourage court and law enforcement personnel to follow similar rules designed to avoid prejudice to those accused of crime.

To safeguard the rights of a free press, the Standards provide for the prompt release from official sources of basic facts about crimes committed and the circumstances surrounding them. In addition, they impose no real restriction upon the freedom of the media to publish whatever information they are able to obtain through their own initiative.

Besides the recommendation relating to the conduct of the participants in the criminal process, the Standards also provide guidelines for the conduct of judicial proceedings in criminal cases. For example, in all pretrial hearings the defendant may move, in a proper case, that the public be excluded on the ground that dissemination of evidence or argument may disclose prejudicial matters that will be inadmissible at trial. The defendant may also obtain a change of venue whenever it is determined that because of the publication of potentially prejudicial material there is a reasonable likelihood that, absent such relief, a fair trial cannot be had. Provisions relating to waiver of jury, selection of jury, use of the courtroom, and seques-

29. ABA Project on Minimum Standards for Criminal Justice, Standards Relating to Fair Trial and Free Press § 1.1 (app. draft 1968) [hereinafter cited as Fair Trial].
30. Id. §§ 2.1.
31. Id. §§ 1.1, 2.1.
32. Id. § 3.1.
33. Id. § 3.2. See People v. Quinlan, 8 Cal. App. 3d 1063, 1069, 88 Cal. Rptr. 125, 129 (1970), citing § 3.2(c), and State v. Clarke, 49 Wis.2d 161, 167, 181 N.W.2d 355, 358 (1970).
34. Fair Trial § 3.3.
35. Id. § 3.4. See Napier v. State, 266 N.E.2d 199, 208-09 (Ind. 1971)
36. Fair Trial § 3.5(a).
tration of the jury\textsuperscript{37} are likewise included to assure the defendant relief from an unfair trial. Compliance with the aforementioned safeguards notwithstanding, the defendant may still have the verdict set aside if the court finds a substantial likelihood that the vote of one or more jurors was influenced by exposure to an extra-judicial communication.\textsuperscript{38}

To enforce the guidelines prescribed, the Standards authorize suspension and disbarment of lawyers\textsuperscript{39} and limited use of the contempt power.\textsuperscript{40} The American Bar Association Code of Professional Responsibility also specifically denominates a breach of the Standards to be unprofessional conduct.\textsuperscript{41} In many instances, the guidelines provided by the Standards have been met by compacts of understanding between the fourth estate and the bar, which make both professions assume responsibility

\textsuperscript{37} Id. § 3.5(b). See also Napier v. State, 266 N.E.2d 199, 208-09 (Ind. 1971), citing § 3.5(f).
\textsuperscript{38} FAIR TRIAL § 3.6.
\textsuperscript{39} Id. § 1.3.
\textsuperscript{40} Id. § 4.1.
\textsuperscript{41} On August 14, 1964, the House of Delegates, at the request of then President (now Justice) Lewis F. Powell, Jr., created the Special Committee on Evaluation of Ethical Standards. To the extent that the Standards on Fair Trial and Free Press refer to the conduct of attorneys, they have been incorporated in the new Code of Professional Responsibility; specifically, Disciplinary Rule 7-107 (which replaces former Canon 20). Implementation of the Code of Professional Responsibility, since it was approved by the House of Delegates on August 12, 1969, has been widespread. It has been adopted in the District of Columbia and in thirty-nine states: Alaska, Arizona, Arkansas, Colorado, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Utah, Virginia, Vermont, West Virginia, and Wisconsin. In eight other states (Connecticut, Massachusetts, Montana, Rhode Island, South Carolina, Texas, Washington, and Wyoming), the state bar association has approved the Code and transmitted it to the highest court with a recommendation for adoption.

Moreover, the desirability of having substantially uniform fair trial—free press procedures in both state and federal courts was recognized in the report of a Special Committee of the Judicial Conference of the United States which developed guidelines for the federal court system. The federal standards were adopted by the Judicial Conference on September 15, 1968, and they have been widely implemented through rules adopted in the United States District Courts. The Special Committee of the Judicial Conference was under the Chairmanship of Judge Irving R. Kaufman of the Second Circuit. His report pointed out that lawyers and court personnel have been "one of the chief sources of prejudicial publicity," that "unquestionably the courts have the power to regulate this particular source of information, and there now seems to be general agreement that they have the duty to do so." Report of the Committee of the Operation of the Jury System on the "Free Press—Fair Trial" Issue, 45 F.R.D. 391, 406 (1969). As they apply to lawyers and court personnel, the federal court standards incorporated the American Bar Association Standards in full, and in identical language.
for insuring that a defendant does not have his trial contaminated by improvident news releases.

**Electronic Surveillance**

The Standards Relating to Electronic Surveillance represent a comprehensive proposal designed to insure the maintenance of privacy and the promotion of justice. The need for guidelines in the area was highlighted by The Report of the President's Commission on Law Enforcement and Administration of Justice, which concluded: "The present status of law [relating to electronic surveillance] is intolerable. It serves the interests neither of privacy nor of law enforcement." This judgment was reached in 1967. Since that date, the United States Supreme Court has established constitutional standards for the use of electronic surveillance by law enforcement officers, and the Congress has enacted comprehensive legislation dealing with wiretapping, bugging, and other forms of electronic surveillance by private individuals and law enforcement officers.

Today, a number of states have followed the congressional invitation and enacted comprehensive legislation in the area. In those remaining states which have either taken no action or must reconsider their previous legislation in light of the constitutional requirements which have been established, these Standards are of prime relevancy.

The objective of the Standards is to prohibit private electronic surveillance and to subject electronic surveillance by public law enforcement personnel to strict limitations. To effect these objectives, the Standards include both criminal and

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42. ABA Project on Minimum Standards for Criminal Justice, Standards Relating to Electronic Surveillance § 1.1(a) (app. draft 1971) [hereinafter cited as Electronic Surveillance].
43. The Challenge of Crime in a Free Society 203 (a report from the President's Commission on Law Enforcement and Administration of Justice, 1967).
47. Electronic Surveillance § 1.1(b), (c).
48. Id. § 2.1.
civil sanctions. In addition, the Standards recommend suppression of oral communications obtained illegally by law enforcement officials.

In the area of national security, federal use of electronic surveillance is under the supervision of the executive and legislative branches of the government, and the evidence obtained thereby is admissible in court where the overhearing or recording was reasonable.

Use of electronic surveillance techniques by law enforcement officers with the consent of one of the parties to the communication should be permitted. Use of electronic surveillance by law enforcement officers without consent requires prior judicial approval, except in emergency situations, where approval may be obtained after the fact. In order to obtain judicial approval for electronic surveillance, law enforcement officers are required to submit an application containing facts analogous to those which must be shown in order to obtain a search warrant. Because of the magnitude of the invasion of privacy occasioned by electronic surveillance, the officers seeking an order approving the use of such techniques must establish that other investigative procedures will not succeed.

Where a communication relating to an offense other than the offense under investigation is overheard or recorded, its use or disclosure is permitted, subject to the same procedural safeguards which are generally required to provide an adequate record for appellate court review.

**DISCOVERY AND PROCEDURE BEFORE TRIAL**

The Standards Relating to Discovery and Procedure Before Trial are designed for serious criminal cases. They propose

49. Id. § 2.2.
50. Id. § 2.3.
51. Id. § 3.1.
52. Id. § 3.2.
53. Id. § 4.1. See United States v. White, 401 U.S. 745, 753, 762, 771, 790 (1971), for citation to § 4.1 in both the majority and dissenting opinions.
54. ELECTRONIC SURVEILLANCE § 5.1.
55. Id. § 5.2.
56. See id. §§ 5.3, 5.4.
57. Id. § 5.4 (III).
58. Id. § 5.6.
59. Id. §§ 5.2, 5.3.
60. ABA PROJECT ON MINIMUM STANDARDS FOR CRIMINAL JUSTICE, STANDARDS RELATING TO DISCOVERY AND PROCEDURE BEFORE TRIAL § 1.5 (app.draft 1970) [hereinafter cited as DISCOVERY].
more permissive discovery practices for criminal cases than are
provided by applicable law in any jurisdiction in the United
States. They also propose a procedure prior to trial which is
intended not only to accommodate such discovery, but also to
correct certain general dissatisfactions with criminal litigation.

The discovery provided for is premised on the view that
broad disclosure of the prosecution's case is the best method to
assure that the disposition of a criminal case is final. The Stan-
dards should expedite and simplify the discovery process and
should shorten trials. The discovery proposed is, in large
measure, an outgrowth of recent developments which have sig-
nificantly expanded federal criminal discovery.

The Standards require the prosecution to take the initiative
in furnishing defense counsel with such things as lists of wit-
nesses and their statements, statements of the accused or his
co-defendant, relevant portions of grand jury minutes, reports
of experts, and real evidence. The prosecution is not required
to disclose its working papers or work product, identity of in-
formants where irrelevant to the issues, or material involving
a substantial risk of grave prejudice to the national security.
The Standards have also caused reciprocal discovery to come of
age. The defense is required to make certain disclosures,
including non-testimonial disclosures by the defendant and the
disclosure of experts' reports which are not constitutionally pro-
tected. Both sides have the continuing duty to disclose addi-
tional discoverable information as they learn of its existence.

61. Id. § 1.2.
62. See Giles v. Maryland, 386 U.S. 66 (1967); Dennis v. United States,
384 U.S. 855 (1966); Brady v. Maryland, 373 U.S. 83 (1963); Jencks v. United
States, 353 U.S. 657 (1957); Fed. R. Crim. P. 16 and 17.1; 18 U.S.C. § 2500
(1970). See also Proceedings at the 1969 Judicial Conference—United States
Court of Appeals Tenth Circuit—Minimum Standards for Criminal Justice,
63. Discovery § 2.1. Numerous cases have cited this Standard, including;
United States v. Barson, 434 F.2d 127, 129 (5th Cir. 1970); State v. Smith,
482 P.2d 863, 869 (Ariz. 1971); Z. v. Superior Court of Los Angeles County,
81 Cal. Rptr. 594, 475 P.2d 28, 30 (1970); State ex rel. Dooley v. Connall, 475
P.2d 582, 585-86 (Ore. 1970); Commonwealth v. Turra, 442 Pa. 192, 275 A.2d
64. Discovery § 2.6. See Hickman v. Taylor, 329 U.S. 495 (1947), for a
definition of work product.
65. Discovery §§ 3.1, 3.2. See also Williams v. Florida, 399 U.S. 78 (1970),
requiring defendant to provide notice of alibi.
66. Discovery § 4.2.
The procedure prior to trial is organized into three successive stages: first, a period of inter-action between the prosecutor and defense counsel, without court intervention; second, involvement of the court in supervising discovery, and acting as a catalyst to move the process along; and third, for those cases which require it, planning for the anticipated trial. The novel feature of this procedure is the second stage, or Omnibus Hearing, so named because it is intended to serve as an all-purpose hearing. One significant aspect of the Omnibus Hearing is the use of a check-list to assure that all conceivable issues are exposed and dealt with early in the process, rather than being strung out by the filing of successive separate motions, briefs, and responses. This use of a check-list is also of benefit to assigned counsel whose practice is often not primarily in the criminal law field.

The discovery and pretrial procedures proposed by these Standards were first implemented on an experimental basis in the United States District Court for the Southern District of California in 1967 and in the Western District of Texas by Chief Judge Adrian A. Spears. Judge Spears, in his utilization of the Omnibus Hearing, through court rule, obtained results which are highly favorable. Based upon the success of these experiments, the Standards are rapidly being implemented in other jurisdictions.

PLEAS OF GUILTY

The Standards Relating to Pleas of Guilty are proposed for use in all serious criminal cases. They are based on the conclusion that disposition without trial should continue to be a

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67. Id. § 5.1.
68. Id. § 5.3.
70. Procedural reform consistent with the Standards is also urgently needed in courts of limited jurisdiction. See Dash, Cracks in Foundation of Criminal Justice, 48 Ill. L. Rev. 383 (1961); Nutter, The Quality of Justice in Misdemeanor Arraignment Courts, 53 J. Crim. L.C. & P.S. 215 (1962); Note, Metropolitan Criminal Courts of First Instance, 70 Harv. L. Rev. 320 (1956).
frequent means for disposition of criminal cases.\textsuperscript{71} In conjunction therewith, the Standards recognize the propriety of certain plea agreements and reject the view that plea agreements are illicit or, in the words of Thurman Arnold, “immoral, or at best a necessary evil.”\textsuperscript{72}

Included within the Standards are procedures to govern the informal process of plea negotiation\textsuperscript{73} and the formal process by which a guilty plea is received and accepted in court.\textsuperscript{74} In addition, the Standards deal with the timeliness of withdrawal motions and the grounds which justify withdrawal of a plea of guilty or nolo contendere.\textsuperscript{75}

In the area of plea discussions and plea agreements, the

\textsuperscript{71} In some jurisdictions approximately 90 percent of the convictions are obtained as the result of a guilty plea.


\textsuperscript{74} Pleas of Guilty §§1.1-1.8. For cases citing these Standards, see People v. Randolph, 488 F.2d 203 (Colo. 1971); State v. Slisco, 169 N.W.2d 542 (Iowa 1969); Black v. State, 289 Minn. 328, 352, 184 N.W.2d 419, 421 (1971); State ex rel. Kons v. Tahash, 281 Minn. 467, 471, 161 N.W.2d 826 (1968); State v. Decker, 151 N.W.2d 746, 750 (N.D. 1970); Austin v. State, 50 Wis.2d 113, 183 N.W.2d 58, 57 (1971).

\textsuperscript{75} Pleas of Guilty §§2.1-2.2. For cases discussing these sections in conjunction with withdrawal of pleas, see United States ex rel. Scott v. Mancusi, 429 F.2d 104, 110 (2d Cir. 1970); People v. Riebe, 40 Ill.2d 565, 241 N.E.2d 313 (1968); People v. Walston, 38 Ill.2d 39, 230 (N.E.2d 233 (1967); People v. Baro, 284 N.E.2d 423, 425 (Ill. App. 2d Dist. 1970); State v. Loyd, 190 N.W.2d 123 (Mich. 1971); People v. Palma, 25 Mich.App. 692, 181 N.W.2d 808, 810 (1970); Chapman v. State, 282 Minn. 13, 162 N.W.2d 698 (1968); State v. Wolske, 280 Minn. 465, 160 N.W.2d 146 (1968); State v. Warren, 278 Minn. 190, 153 N.W.2d 273 (1967); Peters v. State, 50 Wis.2d 832, 184 N.W.2d 828-29 (1971); State v. Froelich, 49 Wis.2d 551, 182 N.W.2d 267, 271 (1971); Young v. State, 49 Wis.2d 361, 182 N.W.2d 262, 265 (1971); Belcher v. State, 42 Wis.2d 299, 166 N.W.2d 211, 217 (1969); State v. Draper, 41 Wis.2d 747, 165 N.W.2d 165, 168 (1969); Reiff v. State, 41 Wis.2d 369, 164 N.W.2d 249, 250 (1969); State v. Galvin, 40 Wis.2d 679, 162 N.W.2d 622, 624 (1968); LeFebre v. State, 40 Wis.2d 666, 162 N.W.2d 544, 546 (1968); State v. Harrell, 40 Wis.2d 187, 161 N.W.2d 223, 226 (1968); Cresci v. State, 36 Wis.2d 287, 152 N.W.2d 893 (1967).
Standards make the proceedings visible and subject to systematic control. They also require equal plea agreement opportunities for defendants occupying similar positions and recommend the use of plea discussions only in cases where the public interest and the effective administration of justice will be served. Furthermore, they provide guidelines for proper conduct in such proceedings on the part of defense counsel, prosecutors, and judges.

To assure that a defendant's rights are protected in entering a plea of guilty, the Standards incorporate all of the constitutional requirements with regard to entering pleas of guilty which have been set forth in recent decisions of the United States Supreme Court. The Standards require that the defendant have the aid of counsel prior to the entry of the plea or, at least, time for deliberation if he is without counsel. The court is required to advise the defendant of certain rights and certain consequences of his plea to determine the voluntariness of the

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76. PLEAS or GUILTY § 1.5. See, e.g., Santobello v. New York, 92 S. Ct. 495 (1971), in which the United States Supreme Court vacated a judgment and sentence imposed as the result of a guilty plea that was induced by the promise of a prosecutor which was later disavowed.

77. PLEAS or GUILTY § 3.1(c).

78. Id. §§ 1.8, 3.1(a). For cases citing § 3.1(a), see United States ex rel. Scott v. Mancusi, 429 F.2d 104, 113 (2d Cir. 1970); United States ex rel. Brown v. LaValle, 424 F.2d 457 (2d Cir. 1970); Meyer v. United States, 424 F.2d 1181, 1185-96 (8th Cir. 1970).

79. PLEAS or GUILTY § 3.2, cited with approval, Bresnahan v. People, 487 P. 2d 551, 556 (Colo. 1971).

80. PLEAS or GUILTY § 3.1(b).


83. PLEAS or GUILTY § 1.3, cited in Grades v. Boles, 398 F.2d 409 (4th Cir. 1968).

84. PLEAS or GUILTY § 1.4. For cases citing this section, see United States v. Howard, 407 F.2d 1102 (4th Cir. 1969); People v. Flannigan, 267 N.E.2d 739 (Ill. App. 1971); People v. McCullough, 45 Ill.2d 305, 259 N.E.2d 19, 21-22 (1970); State v. Coe, 188 N.W.2d 421, 422 (Minn. 1971); State v. Judd, 277 Minn. 415, 150 N.W.2d 724 (1967); Wilson v. State, 456 S.W.2d 941, 944 (Tex. 1970); Ex parte Battenfield, 466 S.W.2d 569 (Tex. App. 1971); McBain v. Maxwell, 2 Wash.App. 27, 466 P.2d 177 (1970).
and to enter judgment on the plea only when satisfied as to its factual basis. A verbatim record of these proceedings is required so that a reviewing court will have sufficient information to determine whether the defendant's rights have been protected.

JOINDER AND SEVERANCE

The Standards Relating to Joinder and Severance deal with the joinder and severance of offenses and defendants in criminal cases. They were formulated to expedite the handling of criminal cases without excessive demands on prosecutorial and judicial resources and to protect defendants from the risk of prejudicial and unfair treatment. The Standards continue to make joinder and severance a matter of the court's discretion. However, they provide more guidelines than rules 8, 13, and 14 of the Federal Rules of Criminal Procedure, and they should be of invaluable assistance to the prosecution, the defense, and the trial judge.

The Standards approve wide-open joinder and then recognize the right to a severance when the defendant's rights to a fair trial are jeopardized. For example, the Standards permit the prosecutor to join in one-charge offenses of the same or similar character, even though the offenses are not part of a single scheme or plan. The defendant in such cases has an


86. Pleas of Guilty § 1.6. See Manley v. United States, 432 F.2d 1241, 1243 (2d Cir. 1970); Moneyhun v. People, 486 P.2d 434 (Colo. 1971); State v. Coe, 188 N.W.2d 421, 422 (Minn. 1971); State ex rel. Kons v. Tahash, 281 Minn. 467, 161 N.W.2d 826 (1968); Edwards v. State, 51 Wis.2d 231, 186 N.W.2d 193, 195 (1971); State v. Reppin, 35 Wis.2d 377, 151 N.W.2d 9 (1967).

87. Pleas of Guilty § 1.7; see People v. West, 91 Cal. Rptr. 385, 477 F.2d 409, 418 (1970).

88. Timeliness of a motion for severance, waiver of severance, and problems related to double jeopardy are covered in ABA Project on Minimum Standards for Criminal Justice, Standards Relating to Joinder and Severance § 2.1 (app. draft 1968) [hereinafter cited as Joinder]. § 2.1 and the commentary thereto was relied upon in United States ex rel. Tarallo v. LaVallee, 433 F.2d 4, 6 (2d Cir. 1970).

89. Joinder § 1.1(a). The commentary to this section was cited with approval in United States v. Franklin, 452 F.2d 926 (8th Cir. 1971).
absolute right to a severance of the offenses. Thus, the Standards permit the defendant to dispose of all charges in one trial or to gamble on concurrent sentencing in the event of a conviction. The Standards also allow joinder when the offenses are based on the same conduct or on a series of acts connected together or constituting part of a single scheme or plan. The defendant does not incur a disadvantage because the “other crimes” test would permit evidence in both trials. On the matter of failure to join closely related offenses, the Standards conform with the Model Penal Code in the view that a defendant should be protected against successive prosecutions for the same conduct.

Severance focuses on the critical issue of whether the trier of fact will be in a position to separate out the facts and the law applicable to each count. Before trial, a severance is to be granted when deemed appropriate to promote a fair determination of the defendant’s guilt or innocence of each offense. During trial, a severance is called for when it is deemed necessary to achieve a fair determination of the defendant’s guilt or innocence of each offense. A broad test is considered proper before trial, when the decision must often be made by speculating on what will occur during trial; a stricter test is appropriate when the motion is based on events which have already occurred. The motion, if granted, would require termination of a partially completed trial.

If a defendant moves for severance at the conclusion of the prosecution’s case or of all the evidence, and there is not sufficient evidence to support the allegations upon which the moving defendant was joined for trial with the other defendant or defendants, the court should grant a severance if, in view of this lack of evidence, severance is deemed necessary to achieve a fair determination of that defendant’s guilt or innocence.

With regard to the joinder and severance of defendants, the

90. JOINDER § 2.2(a).
91. Id. § 1.1(b).
92. Id. § 1.3. This section is comparable to ABA MODEL PENAL CODE § 1.08, comment (Tent.Draft No. 5, 1956).
93. JOINDER § 2.2(b)(i).
94. Id. § 2.2(b)(ii).
95. Id. § 2.4.
Standards follow the approach of the Federal Rules with changes to avoid the difficulties which have been experienced in the federal courts. The Standards permit joinder of defendants under the following circumstances:

". . .

"(a) when each of the defendants is charged with accountability for each offense included [e.g., A is charged with burglary, B is charged with aiding and abetting that burglary];

"(b) when each of the defendants is charged with conspiracy and some of the defendants are also charged with one or more offenses alleged to be in furtherance of the conspiracy; or

"(c) when . . . it is alleged that the several offenses charged:

(i) were part of a common scheme or plan [e.g., where, though no conspiracy count, A and B are charged with filing a false form with respect to A's draft deferment, and A and C are charged with making a false statement in a letter concerning that deferment]; or

(ii) were so closely connected in respect to time, place, and occasion that it would be difficult to separate proof of one charge from proof of the others [e.g., when A and B both are charged with negligent homicide in the operation of separate vehicles involved in a single accident]."96

Severance of joint defendants involves the same considerations that were present in granting severance of offenses.97

The Standards relating to severance of a defendant named in the confession of a co-defendant98 follow the law established

96. Id. § 1.2.
97. Id. § 2.3(b).
98. Id. § 2.3(a). In Reed v. People, 482 P.2d 110 (Colo. 1971), this Standard was adopted as the law to be followed in determining whether a defendant should be granted a severance when a co-defendant's out-of-court statement is admitted into evidence. See also Nelson v. O'Neill, 402 U.S. 622, 636 (1971); People v. Marra, 27 Mich. App. 1, 183 N.W.2d 418, 422 (1971) (concurring opinion); Commonwealth v. Massey, 218 Pa. Super. 68, 272 A.2d 269, 270 (1970).
in Bruton v. United States, which overruled the case of Delli Paoli v. United States. In the Bruton case, the Supreme Court declared that it was the height of sophistry to think that the jury could consider the confession against only the person who had made the confession, when the other defendant was clearly implicated thereby.

**Speedy Trial**

The Standards Relating to Speedy Trial are concerned with how the interest of defendants and the public in prompt trials should be defined, protected, and achieved. Formation of the Standards was deemed especially necessary in light of the recent application of the sixth amendment to the states and the considerable variety and uncertainty in state statutes dealing with the right to speedy trial.

The Standards adopt the policies of the federal system and those state jurisdictions which require that criminal trials should take precedence over civil trials and provide that jailed defendants should be tried before those on bail are tried. Although no attempt is made to state a specific speedy trial limit in terms of days or months, it is recommended that each jurisdiction do so. In order to compute such a time limit, the Standards identify the point at which the time for trial begins running and the periods during which the running of the time is tolled. Failure to grant a defendant a trial within the time limits pre-

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100. 352 U.S. 232 (1957).
103. ABA Project on Minimum Standards for Criminal Justice, Standards Relating to Speedy Trial § 1.1 (app.draft 1968) [hereinafter cited as Speedy Trial].
105. Speedy Trial § 2.2. For citation to this section, see United States v. Holt, 448 F.2d 1103, 1111 (D.C. Cir. 1971); Rutherford v. State, 488 P.2d 946, 951 (Alaska 1971); McMillen v. State, 182 N.W.2d 845, 847 (Minn. 1970).
106. Speedy Trial § 2.3. For citation to this section, see United States v. Cartano, 420 F.2d 362, 364 (1st Cir. 1970); Garris v. United States, 418 F.2d 667, 669 (D.C. Cir. 1969); State v. Russo, 190 N.W.2d 853, 854 (Neb. 1971); Commonwealth v. Leaming, 275 A.2d 43, 46 (Pa. 1971).
scribed results in the outright dismissal of charges with one limitation.107

In Indiana and other states, a shorter statute of limitations exists for those in custody, and failure to try a defendant in custody within the prescribed period results in the release of the defendant on his own recognizance.108

One matter of major practical importance in determining the boundaries of the speedy trial guarantee arises from the situation involving charges against a person serving a term of imprisonment for another offense. The Standards deal with such problems by providing that if the prosecutor knows that a defendant is serving a prison term either within or outside the jurisdiction, he must promptly undertake to obtain the prisoner's presence for trial or file a detainer.109 If a detainer is filed, the custodial officials will so advise the prisoner and inform him of his right to demand trial. If he makes such a demand, it is to be transmitted to the prosecutor, who must then seek to obtain the prisoner's presence for trial.110 The speedy trial limitations would commence to run when the prisoner's presence has been obtained or when demand is made by the defendant.111 Periods of unreasonable delay in filing a detainer or in seeking to obtain a prisoner's presence would be included in computing the time limit for trial.112

TRIAL BY JURY

The Standards Relating to Trial by Jury deal with various aspects of jury trial in criminal cases, including such broad issues as when the jury will be used,113 how it should be selected,114 how the trial should be conducted to insure that the

107. SPEEDY TRIAL § 4.1. For citation to this section, see Short v. Cardwell, 444 F.2d 1368, 1371 (6th Cir. 1971); Kane v. State, 419 F.2d 1369, 1373 (4th Cir. 1970); McMillen v. State, 182 N.W.2d 845, 847 (Minn. 1970); Commonwealth v. Clark, 439 Pa. 192, 266 A.2d 741, 743 (1970).
108. SPEEDY TRIAL § 4.2.
109. Id. § 3.1(a)(1)-(ii). For citation to this section, see Short v. Cardwell, 444 F.2d 1368, 1371 (6th Cir. 1971). See also Kane v. State, 419 F.2d 1369 (4th Cir. 1970).
110. SPEEDY TRIAL § 3.1(b).
111. Id. § 3.2.2.
112. Id.
113. ABA PROJECT ON MINIMUM STANDARDS FOR CRIMINAL JUSTICE, STANDARDS RELATING TO TRIAL BY JURY §§ 1.1-1.3 (app.draft 1968) [hereinafter cited as TRIAL BY JURY].
114. Id. §§ 2.1-2.7.
jury plays a proper role, and how the deliberations of the jury should be aided and controlled.115

After these Standards were approved, the United States Supreme Court ruled, in Duncan v. Louisiana,117 that the fourteenth amendment controls on the states, with regard to the right to a jury trial, are defined by the same boundaries that the sixth amendment has drawn for the federal system. This was made even more specific in the later case of Baldwin v. New York.118 However, in Justice Fortas' concurrence in Duncan, buttressed by a footnote of the Court, there is optimism that the Supreme Court may reconsider certain suggested proposals of the Standards, such as: trial without jury for lesser offenses, provided there is a right to appeal without unreasonable restriction to a court in which a trial de novo by a jury may be had;119 juries of less than twelve;120 and less than unanimous verdicts.121 Of course, state courts are free to adopt these procedures, unless and until the Supreme Court mandates otherwise.

The sections pertaining to waiver of jury trial provide that waiver is personal to the defendant and can only be accomplished after the defendant is advised by the court of his rights.122 The defendant may waive his right to trial by jury either in writing or in open court for the record, but the defendant's waiver must be voluntarily and knowingly entered.124 Consent of the prosecution or the court is not made a condition to effective waiver of jury trial by the defendant.


116. Trial by Jury §§ 5.1-5.7.
119. Trial by Jury § 1.1(b).
120. Id. § 1.1(c).
121. Id. § 1.1(d).
122. Id. §§ 1.2(b), 1.3(c). For cases citing § 1.2(b) with approval, see Harvin v. United States, 445 F.2d 675, 684 (D.C. Cir. 1971); United States v. Straile, 425 F.2d 994, 995-96 (D.C. Cir. 1970).
123. Trial by Jury §§ 1.2(b), 1.3(c).
124. Id. § 1.2(a)-(c). See State v. Jelks, 461 P.2d 473 (Ariz. 1969), in which there was a vigorous dissent that relied heavily upon § 1.2 and the commentary thereto in arguing that constitutional rights of this nature could only be effectively waived if the defendant were addressed personally to insure that the waiver was voluntarily and intelligently made.
On selection of prospective jurors, the Standards focus upon the appropriate criteria for determining juror qualifications and exemptions. They also provide that upon request the parties should be furnished with a list of prospective jurors. The Standards follow the federal practice of having the court conduct the voir dire to ascertain whether grounds exist for a challenge for cause and to aid counsel in the intelligent exercise of peremptory challenges.

The Standards contain several controversial features. One such feature is the right of jurors to take notes in the course of the trial; another is the right of the trial judge to comment upon the evidence, subject to certain limitations. In dealing with the shot-gun instruction, or dynamite charge, permitted by Allen v. United States, the Standards condemn the continued use of the instruction. If it is to be used at all, it should be used at the time the initial instructions are given rather than after the jury has commenced its deliberation.

The Standards recommend that the court instruct the jury after the arguments of counsel. In addition, the Standards direct that the court advise counsel of the instructions that are to be given before argument. They also set forth procedures to be followed when the jury wants to review certain evidence and when additional instructions are needed.

125. TRIAL BY JURY § 2.1.
126. Id. § 2.2.
127. Id. § 2.4. See United States v. Anderson, 433 F.2d 856, 858 (8th Cir. 1970).
128. TRIAL BY JURY § 4.2.
129. Id. § 4.7. This section was recently cited, together with the commentary, in United States v. Kwitek, 433 F.2d 18, 20 (7th Cir. 1970). In United States v. Garaway, 425 F.2d 185 (9th Cir. 1970), the court cited § 4.7(b)(ii) in support of its holding that a judge cannot express an opinion as to the defendant's guilt. And in United States v. Smith, 399 F.2d 886 (6th Cir. 1968), the court followed the tentative draft of Trial by Jury, holding that a judge may neither express an opinion on guilt nor suggest a verdict to the jury.
130. 164 U.S. 492 (1896).
132. TRIAL BY JURY § 4.8(d).
133. Id. § 4.8(c).
134. Id. § 5.2. This section was followed in United States v. Schor, 418 F.2d 28, 31 (2d Cir. 1969).
The Standards also spell out with some particularity the manner in which a jury verdict can be impeached, and permit a juror to testify as to improper matters or conduct in the jury-room which denied the defendant his constitutional right to confrontation of witnesses.\textsuperscript{136}

\textbf{Sentencing Alternatives and Procedures}

The \textit{Standards Relating to Sentencing Alternatives and Procedures} are premised on the conclusion that judges, rather than lay juries, should exercise sentencing authority.\textsuperscript{137} This view is based on the difficulties presented by sentencing decisions and the need to develop an expertise beyond that which can be expected of the average jury. Because many of the problems in the area of sentencing are legislative in nature, the Standards are not limited to what judges can do; instead, they are aimed, as well, at the need for legislative changes in the substantive criminal law which would provide a rational scheme for sentencing and which would allow judges a wider range of alternatives.

In an effort to improve sentencing procedures, the Standards propose that all crimes be classified, for the purpose of sentencing, into categories which reflect substantial differences in gravity.\textsuperscript{138} The establishment of a maximum term is recommended in all cases.\textsuperscript{139} The Standards also recommend that mandatory and minimum sentences be abolished, but include authority for the judicial imposition of minimum sentences under stated circumstances.\textsuperscript{140}

The Standards emphasize that many sentences authorized by statute are significantly longer than necessary in the vast

\textsuperscript{136} \textit{Trial by Jury} § 5.7. This section was cited in Miller v. United States, 403 F.2d 77 (2d Cir. 1968), as authority for the proposition that post-conviction interrogation of jurors by private parties should be forbidden. Instead, the judge should make inquiries and take objective evidence of substantive, but not procedural, grounds for impeachment of the verdict.


\textsuperscript{138} \textit{Sentencing} § 2.1(a).

\textsuperscript{139} Id. § 3.1.

\textsuperscript{140} Id. §§ 3.2, 2.1(c). See United States v. Chappell, 292 F. Supp. 494 (C.D. Cal. 1968), in which § 2.1(c) was cited with approval.
The Standards suggest that it would be desirable for the penal code to differentiate between most offenders and the exceptionally dangerous offender, by providing lower and more realistic sentences for the former and authorizing a special term for the latter. The commentary to those Standards dealing with special term sentences, habitual offender sentences and consecutive sentences, makes it clear that the draftsmen of the Standards were acting on the philosophy that lengthy prison sentences are, as a rule, overused in the sense that many offenders now serving such terms do not pose the requisite danger to society that provides a justification for prolonged incarceration. The Standards call for more discriminate use of long sentences. By the same token, consecutive sentences are discouraged, and their imposition authorized only after a finding that confinement for such a term is necessary in order to protect the public from further criminal conduct by the defendant. To avoid disparity in sentencing, the Standards further recommend that the defendant be granted credit for time spent in custody prior to the imposition of sentence.

As part of a scheme allowing greater flexibility in sentencing, the Standards recommend probation, partial confinement, total confinement, use of special facilities, and fines. Fines are recommended as appropriate for felonies only in the case where the defendant has gained money or property through the commission of the offense. Alternative sentences, specifying the amount of jail time which is to be served in the event

141. SENTENCING § 2.1(d); accord, United States v. McCoy, 429 F.2d 729, 743-44 (D.C. Cir. 1970); McCleary v. State, 49 Wis. 2d 283, 182 N.W.2d 512, 518 (1971).
142. SENTENCING §§ 2.5(b), 3.1(c).
143 Id. § 3.3.
144. Id. § 3.4(b).
145. Id. § 3.4(b)(iv).
146. Id. §§ 3.6, 5.8. For cases referencing these Standards, see People v. Jones, 489 P.2d 596 (Colo. 1971); Ibsen v. Warden, Nevada State Penitentiary, 86 Nev. 540, 471 P.2d 229, 233 (1970); Fanley v. State, 50 Wis. 2d 113, 116, 183 N.W.2d 33, 35 (1971).
147. SENTENCING § 2.3.
148. Id. § 2.4.
149 Id. § 2.5.
150. Id. § 2.6.
151. Id. § 2.7.
152. Id. § 2.7(a).
of nonpayment, should be prohibited.\textsuperscript{153} Total confinement is recommended only as a last resort.\textsuperscript{154}

Sentencing proceedings should take place as soon as practical after the determination of guilt and the examination of presentence reports.\textsuperscript{155} Such reports should be prepared in every case,\textsuperscript{156} and all derogatory information therein not otherwise disclosed in open court should be brought to the attention of the defendant and his attorney.\textsuperscript{157} The sentencing proceeding should also include full opportunity for the submission by the parties of the facts relevant to the sentence and arguments by defense counsel.\textsuperscript{158} In addition, the defendant should be afforded the right of allocution.\textsuperscript{159}

Reduction or modification of a sentence based upon new factors bearing on the sentence is approved, so long as the proceedings are conducted in open court within a reasonable time.\textsuperscript{160} Under no circumstances, however, should the sentencing court be authorized to increase a term of imprisonment once it has been imposed.\textsuperscript{161}

**Probation**

The Standards Relating to Probation are designed to comple-

\textsuperscript{153} Id. § 2.7(e). For a recent case reaching a result consistent with § 2.7(e), see Tate v. Short, 401 U.S. 395 (1971).

\textsuperscript{154} See Sentencing § 2.2. See also Neely v. State, 47 Wis.2d 330, 177 N.W.2d 79, 82 (1970), in which § 2.2 is discussed.

\textsuperscript{155} Sentencing § 5.4(a). In addition, § 5.2(a) of the Standards provides that to the extent possible, all outstanding convictions should be consolidated for sentencing at one time. See People v. Terven, 264 N.E.2d 538, 540 (Ill. 1970). See also Austin v. State, 49 Wis.2d 727, 183 N.W.2d 55, 58 (1970).

\textsuperscript{156} Sentencing § 4.1. Similar reports are also recommended in revocation proceedings. See § 5.5(c), cited in Hahn v. Burke, 430 F.2d 100, 104 (7th Cir. 1970). See also United States v. Hazlerigg, 430 F.2d 580, 582-83 (8th Cir. 1970); People v. Moton, 25 Mich.App. 383, 181 N.W.2d 571, 572 (1970); State v. Schiltz, 50 Wis.2d 385, 184 N.W.2d 134, 137-38 (1971); McCleary v. State, 49 Wis.2d 263, 182 N.W.2d 512, 518 (1971).

\textsuperscript{157} Id. § 4.4. This section was cited with approval and followed in United States v. Dockery, 447 F.2d 1178, 1187 (D.C. Cir. 1971). See also United States v. Rubin, 433 F.2d 442, 446 (5th Cir. 1970); United States v. Bakewell, 430 F.2d 721, 722 (5th Cir. 1970); Verdugo v. United States, 402 F.2d 599 (9th Cir. 1968); Hanson v. State, 48 Wis.2d 203, 179 N.W.2d 909, 913 (1970).

\textsuperscript{158} Sentencing §§ 5.4(a)(i)-(ii) and 5.3. § 5.3, which sets forth counsel's duties in sentencing procedures, has been cited in United States v. Malcolm, 452 F.2d 809, 815 (2d Cir. 1970) and State v. Bergeron, 185 N.W.2d 894, 896 (Minn. 1971).

\textsuperscript{159} Sentencing § 5.4(a)(iii).

\textsuperscript{160} Id. § 6.1(a). For a case citing § 6.1(a) and holding that a request for reduction or modification of sentence was not within a reasonable time, see State v. Dunn, 282 A.2d 675, 676 (N.H. 1971).

\textsuperscript{161} Sentencing § 6.1(b).
ment the Standards Relating to Sentencing Alternatives and Procedures. Together, they seek to promote greater flexibility in sentencing as a means of rehabilitating criminal offenders and decreasing the costs of correction to society.

The Standards Relating to Probation are premised on the theory that probation can lead to significant improvements in the preventive effects of the criminal law and should be an available disposition in all cases except the most serious offenses. In particular, the Standards provide that probation should be the sentence in a criminal case, unless confinement is necessary to protect the public from further criminal activity by the defendant, the offender is in need of correctional treatment which can be most effectively provided if he is confined, or it would unduly depreciate the seriousness of the offense if a sentence of probation were granted.

The question of what information should be available to the court when it passes sentence is also considered in the Standards. The Standards recommend that a presentence report be made available in all criminal cases to assist the judge in making an intelligent decision. Because of the importance of presentence reports, the Standards set forth detailed guidelines concerning their content, scope, and length.

In addition, the Standards consider what the conditions of probation shall be and when probation should be terminated. Basically, the Standards recommend that probation be tailored to the needs of each individual offender and subject to such modifications or conditions during the course of the probation as are indicated by the probationer's progress or lack of progress.

With regard to the issue of probation revocation, the Stan-

162. ABA Project on Minimum Standards for Criminal Justice, Standards Relating to Probation § 1.1(a) (app.draft 1970) [hereinafter cited as Probation]. The general purpose of these Standards has been approved in State v. Johnson, 270 A.2d 537, 538 (Del. Super. 1970).
164. Probation § 1.3(a)(ii).
165 Id. § 1.3(a)(iii). Whether the defendant pleads guilty, not guilty, or intends to appeal is not relevant to the issue of whether probation is a proper sentence. § 1.3(b), cited in State v. Bergeron, 185 N.W.2d 894, 896 (Minn. 1971).
166. Probation § 2.1(a).
167. Id. § 2.3.
168. Id. § 3.2.
169. Id. §§ 4.1-4.2.
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standards provide specific criteria to assist in the determination of when probation should be revoked in favor of a prison sentence. In substance, the Standards favor revocation only when the defendant's behavior constitutes grounds for imposing a sentence to imprisonment in the first instance. The Standards also propose procedures to be followed in hearings that are held to determine whether probation should be revoked.

The Standards conclude with recommendations addressed to the legislatures for the improvement of probation services.

CRIMINAL APPEALS

The Standards Relating to Criminal Appeals deal with the structure of the appellate system, the nature of access by parties to the appellate level, the problems of transition of cases from the trial courts to the appellate courts, and the internal processing of appeals by appellate tribunals.

While recognizing the need to adopt procedures consonant with the purposes of appellate criminal review, the Standards counsel against specialized courts of criminal appeal. The explanation offered by the commentary to the Standards is that, "[a] court whose work is essentially confined to criminal cases is unlikely to attract the continuing attention, interest and concern of the entire bar, a situation that is not desirable for the well-being of the court nor its stature in the public mind."

The commentary also suggests that specialized criminal courts of appeal could result in a hardening of attitude on the part of the judiciary.

170. Id. § 5.1(a).
171. Id. § 5.4. For citation to the Standards regarding the rights of a defendant in a revocation proceeding, see Bearden v. State, 443 F.2d 1090, 1098 (4th Cir. 1971); State ex rel. Johnson v. Cody, 50 Wis.2d 540, 185 N.W.2d 306, 316 (1971). See also Ex parte Jones, 460 S.W.2d 428, 431 (Tex. 1970).
173. For an article reporting the results of one empirical study of the various factors causing delay in criminal appeals, see Christian, Delay in Criminal Appeals: A Functional Analysis of One Court's Work, 23 Stan. L. Rev. 676 (1971).
174. ABA Project on Minimum Standards for Criminal Justice, Standards Relating to Criminal Appeals § 1.2(a) (app.draft 1970) (hereinafter cited as Criminal Appeals).
175. Id. § 1.2(b).
176. Id. § 1.2(e), commentary.
On the question of access to appellate courts, the Standards adopt the view that an appeal of right should exist in every criminal conviction. However, an appeal is not considered to be a necessary and integral part of every conviction; consequently, the appellate process must be instigated at the defendant's election.

The Standards also provide for a broader right of appeal by the prosecution in criminal cases than is found in most states. The prosecution is given the right to an interlocutory appeal when the issue of double jeopardy, speedy trial, unconstitutionality of a statute, or suppression of evidence results in dismissal or the effective termination of the case. Interlocutory appeals by the defendant are generally not recommended.

Transition of cases from the trial court to an appellate court raises numerous issues. Those considered in the Standards include time limits within which to process an appeal, trial counsel's duties with regard to appeal, inducement and deterrents to taking appeals, and frivolous appeals. Although substantial attention is given to the elimination of frivolous appeals, the Standards take the position that the only solution is to find administrative ways to expedite the flow of cases through the appellate forum to the final decision on the merits. If defense counsel cannot dissuade a client from bringing a frivolous appeal, the Standards provide that it is not improper for counsel to submit the case on brief without oral argument.

Because of constitutional infirmities which are believed to be inherent in denying a transcript to an indigent, the Standards

177. CRIMINAL APPEALS § 1.1(a).
178. Id. § 1.1(b).
180. CRIMINAL APPEALS § 1.2(b)(i). See State v. Blondin, 270 A.2d 165, 166 (Vt. 1970), for citation to § 1.3(b).
181. CRIMINAL APPEALS § 2.1.
182. Id. § 2.2.
183. Id. § 2.3.
184. Id. § 2.4.
185. Id. § 2.4(a)(ii).
186. Id. § 2.2(b)(ii). The recommendations of the Standards regarding the duties of defense counsel on appeal are founded largely upon Anders v. California, 386 U.S. 738 (1967). In the case of McClendon v. People, 481 P.2d 715 (Colo. 1971), defense counsel determined that the appeal of his client lacked merit. Unable to dissuade his client from appealing, he submitted the case on briefs which presented each of the points urged by the defendant as a basis for appeal. The court approved of defense counsel's decision and cited the Standards in support of his action.
recommend that transcripts be made available as requested by counsel for appellants. 187

APPELLATE REVIEW OF SENTENCES

The Standards Relating to Appellate Review of Sentences reflect a minority view, inasmuch as review of the merits of a sentence has actually been undertaken by appellate courts in less than one-half of the states. 188 The reason sentence review has been unavailable in so many states and federal jurisdictions is that courts have been hesitant to exercise such power in the absence of clear statutory authority. 189 Because of the judiciary's reluctance to act, the Standards were drafted primarily to assist legislatures in facing the task of developing a system of appellate review of sentences. 190

One reason for appellate review of sentences is that different judges impose widely disparate sentences for the same offense. In most instances, grossly excessive sentences can only be corrected by the executive. Sentence review should force sentencing decisions into the open, and thereby expose for correction numerous mistakes that need not be made again. Moreover, defendants who are sentenced to terms of confinement that conform to those imposed on other inmates are much more likely to approach rehabilitation with a positive attitude than defendants who are deprived of an opportunity to air their grievances concerning the sentences imposed. 191

187. CRIMINAL APPEALS § 3.3(b). See also Cash v. United States, 261 F.2d 731, 740, 741 (D.C. Cir.) (Edgerton, C.J. dissenting), vacated, 357 U.S. 219, (1958): "[T]he burden of prosecuting, defending and deciding appeals, though it is greater, is not inordinately greater than the burden of prosecuting and deciding disputes . . . over the question of whether an appeal should be made possible.


190. In Minnesota, the opportunity for an appellate court to review a sentence has been presented on at least two recent occasions, and in both instances the court declined, but recommended that the legislature consider the Standards with a view to passing legislation to provide for sentence review. McLaughlin v. State, 190 N.W.2d 867, 872 (Minn. 1971); State v. Gamelgard, 287 Minn. 74, 80, 177 N.W.2d 404, 408 (1970).

191. ABA PROJECT ON MINIMUM STANDARDS FOR CRIMINAL JUSTICE, STANDARDS RELATING TO APPELLATE REVIEW OF SENTENCES § 1.2 (app.draft 1968) [hereinafter cited as APPELLATE REVIEW]. See also id. Introduction, at 2. Express recognition of these Standards has already occurred in a number of states.
The Standards accord to the sentencing function the importance which it deserves and place the same safeguards on sentencing that are recognized for every other step in the criminal proceeding. Ultimately, the Standards should reduce the number of appeals, because defendants will recognize that their sentence may, in fact, be increased.\footnote{192}

Basically, the Standards propose that:

1. sentence review should be available in every case in which review of a trial leading to conviction would be available;\footnote{193}
2. existing appellate courts should be empowered to review the sentence along with the other issues in the case;\footnote{194}
3. a transcript of all that occurs in open court with regard to the sentence, together with presentence reports, should be made a part of the record before the reviewing court;\footnote{195} and
4. the reviewing court should be empowered to make any disposition that was open to the sentencing court.\footnote{196}

Although it is expected that the Standards will be of more assistance to legislatures than to courts, one court recently found authority for review in the “persuasive legal literature,” which included the Standards Relating to Appellate Review of Sentences and the state constitution.\footnote{197}

**POST-CONVICTSION REMEDIES**

The Standards Relating to Post-Conviction Remedies provide a renovated system of post-conviction relief which permits review of questions which were not finally adjudicated when the accused was convicted and sentenced.\footnote{198}

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\footnote{192. APPELLATE REVIEW § 3.3.}
\footnote{193. Id. § 1.1(a).}
\footnote{194. Id. § 2.1.}
\footnote{195. Id. § 2.3(a). See generally McCleary v. State, 49 Wis.2d 263, 281-82, 292, 182 N.W.2d 512, 522, 527 (1971).}
\footnote{196. APPELLATE REVIEW § 3.3. See also State v. Chaney, 477 P.2d 441, 443 (Alaska 1970), for discussion of the scope of appellate review.}
\footnote{197. State v. Laws, 51 N.J. 494, 242 A.2d 333 (1968).}
\footnote{198. For a comprehensive survey of the post-conviction remedies available throughout the United States, see Strazzella, Review of Criminal Convictions, 50 Mich. St. B.J. 748, 751 (1971).}
The Standards envision a unified, comprehensive, post-conviction remedy. In an effort to accomplish that purpose, the Standards encompass all grounds for attacking the validity of a conviction or sentence in a criminal case. Unlike habeas corpus, the post-conviction remedy is made available even though the applicant is not presently serving the sentence he seeks to challenge. Because many post-conviction motions are filed pro se, the Standards also include recommendations regarding the needs of prisoners in preparing applications for relief.

The Standards seek to minimize procedural complexities in favor of facilitating prompt consideration of applications on the merits of the contentions advanced. Where there is no factual issue, applications for post-conviction relief can appropriately be decided on the merits without a plenary hearing. In those cases involving the determination of factual issues, discovery techniques, specially adapted for post-conviction proceedings, should be utilized for assistance in advancing the case toward disposition. Once an issue of fact or law has been determined, that adjudication ought to be final and binding. In order to effectuate the finality of judicial decisions, the Standards require that adequate records of prior proceedings be prepared and preserved. Appellate review is proposed as a matter of right at the instance of either party. Where a sen-

199. ABA Project on Minimum Standards for Criminal Justice, Standards Relating to Post-Conviction Remedies § 1.1 (app.draft 1968) [hereinafter cited as Remedies]. See also People ex rel. Anderson v. Warden, 325 N.Y.S.2d 829 (1971), in which the court noted with approval that the New York statutory post-conviction remedies were consistent with the Standards Relating to Post-Conviction Remedies §§ 1.1 (Unitary post-conviction remedy), 1.2 (Characterization of the proceeding), 1.4 (Jurisdiction and venue), and 2.3 (Custody requirement).

200. Remedies § 2.1. In McMillen v. State, 289 Minn. 40, 182 N.W.2d 845, 847 (1970), the court was faced with a change in the law as a ground for post-conviction relief, and it considered § 2.1(a)(vi) to be relevant to its decision.

201. Remedies § 2.3. This Standard is well established, having been cited with approval in Peyton v. Rowe, 391 U.S. 68 (1968).

202. Remedies §§ 3.1-3.5 In United States v. Simpson, 436 F.2d 162, 168-69 (D.C. Cir. 1970), for example, the court considered the possibility of utilizing law students to assist prisoners in making application for relief and cited § 3.1(c)(l).


204. Remedies § 4.5(a). See Dabbs v. People, 486 F.2d 1053, 1054 (Colo. 1971), in which § 4.5(a) was quoted verbatim and adopted as controlling.

205. Remedies § 4.5(b).

206. Id. §§ 6.1(a)(l), 4.6(c). See In re Mossey, 274 A.2d 473, 476 (Vt. 1971), citing § 4.6(d) on burden of proof.

207. Remedies § 5.1(b).
tence is set aside as the result of a successful application for post-conviction relief and the defendant is to be resentenced, the sentencing court should not be empowered to increase the penalty that was originally imposed.\textsuperscript{208}

In short, the Post-Conviction Standards simplify the procedure and fill in the gaps that existed in the federal practice.\textsuperscript{209} Also, the Standards provide a means for eliminating frivolous and false allegations and insure finality in every case.\textsuperscript{210}

\section*{The Prosecution Function and The Defense Function}

The Standards Relating to The Prosecution Function and The Defense Function are intended to serve as a guide to lawyers and judges, a code of professional discipline, and a handbook for law students and the general public. Formulation of the Standards was undertaken because of the dearth of authority on the subject of defense responsibility and the increasing complexity of criminal practice. The Standards are purposely placed under one cover so that the reader may view together all aspects of the functions of the opposing advocates in the administration of criminal justice and recognize the extent to which they are governed by the same basic principles. Because of the breadth of the subject involved, many of the issues considered in these Standards have also been considered in depth in other volumes of the American Bar Association Standards of Criminal Justice.\textsuperscript{211}

The Standards Relating to the Prosecution Function point out that the prosecutor is both an administrator exercising discretion and an advocate.\textsuperscript{212} His basic duty is to seek justice, not

\begin{footnotes}
\item[211] \textit{See}, e.g., the discussion of the prosecutor's role in plea discussions which is included in \textit{Plea of Guilty} § 3.1.
\item[212] \textit{ABA Project on Minimum Standards for Criminal Justice, Standards Relating to the Proposition Function} § 1.1(b) (app.draft 1912) [hereinafter cited as \textit{Prosecution Function}].
\end{footnotes}
merely to convict. The Standards discuss in detail the prosecutor's role in the areas of investigation and charging, plea discussions, trial, and sentencing.

The Standards Relating to The Defense Function outline similar duties of a lawyer in representing those accused of crime from pre-arraignment to post-conviction. The Standards are particularly helpful in answering questions involving control and direction of litigation. The Standards explain that some of the decisions relating to the conduct of the case are ultimately for the accused, while others are ultimately for defense counsel. After full consultation with counsel, the accused must decide what plea to enter, whether to waive a jury trial, and whether to take the stand and testify in his own behalf. Other decisions, such as the decision on what witnesses to call, whether and how to conduct cross-examination, what jurors to accept or strike, what trial motions to make, and all other strategic and tactical decisions are the exclusive province of the lawyer after consultation with his client.

The Standards also consider the particularly knotty problem which arises when the defendant has admitted to his lawyer facts which establish guilt, but the defendant, nevertheless, insists upon taking the stand to testify. The Standards take the

213. Id. § 1.1(c).
214. Id. §§ 3.1-3.9.
215. Id. §§ 4.1-4.3.
216. Id. §§ 5.1-5.10. § 5.6(c) was cited by the court in United States v. Lewis, 435 F.2d 417, 420 (D.C. Cir. 1970), when discussing the impropriety of the prosecutor in displaying prejudicial, tangible evidence prior to good faith tender of such evidence. § 5.8(b), relating to the prosecutor's argument to the jury, was cited in State v. Burgess, 185 N.W.2d 537, 539 (Minn. 1971).

217. PROSECUTION FUNCTION §§ 6.1, 6.2.
218. ABA PROJECT ON MINIMUM STANDARDS FOR CRIMINAL JUSTICE, STANDARDS RELATING TO THE DEFENSE FUNCTION §§ 4.1-4.5 (app.draft 1968) (Investigation and Preparation); 5.1-5.3 (Control and Direction of Litigation); 6.1-6.2 (Disposition Without Trial); 7.1-7.10 (Trial); 8.1-8.5 (After Conviction) [hereinafter cited as DEFENSE FUNCTION]. A sampling of the cases citing these sections follows: State v. Oliver, 23 Ohio App. 2d 210, 262 N.E. 2d 424, 426 (1970), citing § 3.5(b) on conflicts of interest; State v. Reichenberger, 182 N.W.2d 692, 698 (Minn. 1970), citing § 4.3 on relations with prospective witnesses; State v. Schilz, 50 Wis.2d 395, 184 N.W.2d 134, 140 (1971), citing § 6.1(b) on the duty to explore disposition without trial; McClendon v. People, 481 P.2d 417 (Colo. 1971), citing § 8.3 on responsibilities of counsel on appeal.

219. DEFENSE FUNCTION § 5.2.
220. Id. § 5.2(a). This provision has been cited with approval in McClendon v. People, 481 P.2d 417 (Colo. 1971) and Martinez v. People, 480 P.2d 483, 484 (Colo. 1971).

221. DEFENSE FUNCTION § 5.2(b), cited in United States ex rel. Sabella v. Follette, 432 F.2d 572, 576 (2d Cir. 1970).
position that if this situation arose before trial, the lawyer must withdraw from the case, if that is feasible.\footnote{222} If withdrawal is not feasible, or is not permitted by the court, or if the situation arose during the trial, it is unprofessional conduct for the lawyer to lend his aid to the perjury or use the perjured testimony. The lawyer must confine his examination of the defendant to identifying the witness as the accused and permit him to make his statement to the trier or triers of fact. The lawyer may not examine him in the conventional manner and may not later argue the defendant's known false version of the facts to the jury as worthy of belief. Nor may he recite or rely upon the false testimony in his closing argument.\footnote{223}

FUNCTION OF THE TRIAL JUDGE

The completed portion of the Standards Relating to Function of the Trial Judge considers the judge's role in dealing with trial disruptions. These Standards, together with the Standards Relating to The Prosecution Function and The Defense Function, Fair Trial and Free Press, and Providing Defense Services provide guidelines for trial conduct which, if properly enforced, should minimize abuse of the trial process.

Every member of the American public had reason to pause and reflect and to reconsider the position occupied by lawyers and judges in our society after the "Chicago Seven" case became a spectacle.\footnote{224} The history of trial disruption dictates that standards are necessary and should be formulated immediately if the dignity of the court is to be preserved.\footnote{225} Discipline of the disruptive lawyer must be administered without delay. As a result, the special committee, under the chairmanship of Judge Frank Murray, released an advance report relating to the judge's role in dealing with trial disruptions.

Shortly after the "Chicago Seven" trial, the Supreme Court of the United States dealt with the problem in the case of

\footnote{222} Id. § 7.7(b).
\footnote{223} Id. § 7.7(c).
\footnote{225} ABA SPECIAL COMMITTEE ON EVALUATION OF DISCIPLINARY ENFORCEMENT PROBLEMS AND RECOMMENDATIONS IN DISCIPLINARY ENFORCEMENT (1970).}
Illinois v. Allen. In the Allen case, the defendant questioned whether the judge could cause a trial to be completed after the defendant had been removed from the courtroom for threatening the court on numerous occasions and for employing tactics to disrupt and delay the trial. Allen looked to the sixth amendment and his right to confront witnesses as a basis for claiming that he had been denied a fair trial when he was ordered removed from the courtroom after repeated warnings and after he had thrown his counsel's books and papers on the floor. On post-conviction proceedings by Allen, the United States Supreme Court unanimously upheld the trial judge's authority to exclude a disruptive defendant from the courtroom while his trial continued.

The Court's holding has gone a long way toward stemming tactics deliberately aimed at obstructing the judicial process and quieting fears that the system could not respond fairly and effectively to threats against its survival. The Standards attempt to further delineate the responsibility and the power of the trial judge to deal with disruptions. In general, the Standards relate to the need to consider carefully the choice of a sanction for misconduct and to prescribe special rules of order as a precaution against disruptions. More specifically, the Standards consider judicial use of the contempt power and the establishment of guidelines for the deportment of the judge himself. In addition, the Standards deal with the control of spectators, the


228. ABA Project on Minimum Standards for Criminal Justice, Standards Relating to Function of the Trial Judge §§ F.1-F.5 (app.draft 1972) [hereinafter cited as Trial Judge]. In addition, see Mayberry v. Pennsylvania, 400 U.S. 455 (1971), in which the Supreme Court held that it was a denial of due process for the contempt citation not to be reviewed by a different judge prior to imposition of punishment. See also 18 U.S.C. § 401 (1970); Fed. R. Crim. P. 42; R. Goldfarb, The Contempt Power (1963); Frankfurter & Landis, Power of Congress Over Our Procedure in Criminal Contempts in Inferior Federal Courts, 37 Harv. L. Rev. 1010 (1923).

229. Trial Judge § B.1.

230. Id. § E.1.
occasional need to make special arrangements for representatives of the news media, and the disruptive conduct of defendants and attorneys.

In drafting the Standards Relating to Function of the Trial Judge, the special committee had the benefit of the work done by the American College of Trial Lawyers. Moreover, the committee has attempted to weave into the final draft coordinating provisions which will cause the Standards to dovetail with all other Standards, the Code of Professional Responsibility, and the Code of Judicial Ethics. When finally completed, the Standards, as a whole, will provide an integrated set of rules and regulations for the handling of every phase of a criminal case.

Urban Police Function

Although the Standards Relating to Urban Police Function have not yet been approved, a tentative draft of the Standards has been completed. The proposed Standards are addressed to the problems of law enforcement agencies in metropolitan areas. They provide general policy recommendations, rather than specific rules of conduct to be followed by individual police officers. In particular, they provide guidelines and direction for the operation of metropolitan police departments. No attempt has been made at this time to offer Standards for the rural police or for the relatively small police department.

The Standards go to the scope of the police function and attempt to identify the principal objectives and responsibilities of police departments. The Standards also consider the methods and authority available to the police for fulfilling the tasks given them. In addition, they recognize the need for control over police authority and recommend various methods of review. The need to provide adequate police resources is given lengthy consideration. Moreover, the desirability of seeking and developing public understanding and support of police is suggested in the Standards.

The Standards Relating to Urban Police Function will un-

231. Id. § E.2.
232. Id. § C.1.
233. Id. § D.1.
doubtedly be refined before the Standards are approved by the House of Delegates of the American Bar Association. When the Police Function Standards are completed, the Standards Project will have reached that conclusion which marks a new frontier in criminal law.

Conclusion

The American Bar Association has been instrumental in drafting rules of civil and criminal procedure that have now been adopted, updated from time to time, and placed in use in the federal courts and in a majority of the state courts.235

The Federal Rules Project is a true monument to the American Bar Association. However, in examining the aims, scope, and purposes of the American Bar Association Project on Standards of Criminal Justice, legal scholars, judges, lawyers, police, and the public will be forced to conclude that the Standards have filled a gap in our criminal law and procedure that was too long overlooked. Consideration is now being given to the inclusion of the American Law Institute Model Code of Pre-Arraignment Procedure as a part of the Standards to finish the project. When concluded, the American Bar Association and the Institute of Judicial Administration can say that the adoption of the Standards represents the finest achievement of the organized bar.